IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 236 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARTIBEN N PATEL OCTROI INSPECTOR

Versus

MANUBHAI @ MANOJBHAI PRAHLADBHAI GOSWAMI

Appearance:

1. Criminal Revision Application No. 236 of 2000

MR YM THAKKAR for Petitioner No. 1

MR KS JHAVERI for Petitioner No. 1

RULE SERVED for Respondent No. 1

MR PR NANAVATI for Respondent No. 2

NOTICE SERVED for Respondent No. 2

MR SS PATEL APP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 04/09/2003

ORAL JUDGEMENT

The present revision application has been filed by the Octroi Inspector of Ahmedabad Municipal Corporation, for enhancement of punishment imposed on respondent nos.1 and 2. It seems that the respondents had brought certain goods within the limits of Ahmedabad Municipal Corporation, without payment of octroi. On inspection and inquiry, it was noticed that goods was imported within the limits of Ahmedabad Municipal Corporation, without payment of octroi, which would amount to Rs.3,024/-. The said octroi was recovered from the contesting respondents.

2. The original complainant filed Criminal Case No.16342/1999 before the learned Metropolitan Magistrate, Court No.6 at Ahmedabad stating that by not paying the amount of octroi, the contesting respondents have committed offence punishable u/s.398 of the B.P.M.C. Act. On receiving the complaint, summons was issued and in response to the service of summons, the contesting respondents appeared before the trial court. A copy of the complaint was supplied to them and plea was recorded. In reply to the said question, both the respondents admitted the offence. The trial court found that the two respondents voluntarily admitted the offence leveled against them. Therefore, the plea was accepted and the contesting respondents were held guilty for the aforesaid offence. Accordingly, they were convicted and sentenced to pay fine of Rupees Eight Thousand and in default of payment of fine, they were required to undergo S.I. for 30 Days.

3. Feeling aggrieved by the said order of the trial court, the original complainant has preferred this revision application before this Court u/s.397 read with s.401 of the said Code. It has been contended that as per law, the trial court was obliged to consider the evasion of payment of octroi which put the Corporation to financial loss. It has also been contended that as per law, the trial court could have imposed fine which would amount to ten times of the octroi payable. In the present case, the respondents were required to pay octroi of Rs.3,024/- and therefore, the fine could be imposed in a sum of Rs.13,000/-; that the imposition of fine to Rs.8,000/- would be meagre and therefore, with a view to set an example, the trial court ought to have imposed the maximum amount of fine on the respondents; that, therefore, the order of the trial court imposing fine of Rs.8,000/- on each of the two respondents is basically illegal and therefore, it is required to be quashed and

set aside and the maximum amount of fine is required to be imposed on the respondents.

4. On receiving the revision application, Rule was issued and in response to the service of notice of Rule, Mr.P R Nanavaty learned advocate appears on behalf of the contesting respondents and Mr.S S Patel learned APP appears on behalf of the State.

5. On hearing, it is found that the respondents have evaded the payment of octroi and have imported the goods, without taking care of payment of octroi duty at the octroi post. Looking to the facts and circumstances of the case and considering the provision of maximum amount of fine payable, I am of the view that this is a fit case for enhancing the amount of fine, as the amount of fine imposed by the trial court is on the lenient side and leniency cannot be extended to the rich persons, who bring the goods in municipal limits, without paying the octroi duties. Leniency can be shown to the ignorant persons and to the poor. Looking to the facts and circumstances of the case, it would be appropriate to impose a fine of Rupees Twelve Thousand Five Hundred.

6. For the foregoing reasons, this revision application is allowed. The order of the trial court imposing fine of Rs.8,000/- on each of the two respondents is modified and it is directed that each of the two respondents shall pay fine of Rupees Twelve Thousand Five Hundred and in default of payment of fine, each of the two respondents will undergo S.I. for Six Weeks. Rule is made absolute to the above extent. At the instance of learned advocate for the contesting respondents, time to pay fine is granted upto 20/09/03.

(D. P. Buch, J.)

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